

REMARKS

In response to the above-identified Office Action, Applicant amends the application and seek reconsideration thereof. In this response, Applicant amends claims 1, 2, 4, 5, 9 and 25-27. Applicant does not cancel or add any new claims. Accordingly, claims 1-9 and 25-27 are pending.

Claims Rejected under 35 U.S.C. § 112

The Examiner rejects claims 1-9 and 25-27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant amends claims 1-2, 4-5, 9, and 25-27.

Regarding claims 1 and 25, the Examiner alleges that the recitation “indoxyl derivative” is indefinite and confusing since the “derivatives” intended are not defined with any specificity and could be chemical, physical, or biological derivatives. Applicant has amended claims 1 and 25 to recite “indoxyl chemical derivative” to replace “indoxyl derivative”. Therefore, Applicant respectfully submits claims 1 and 25 are not vague, indefinite, and confusing. Thus, Applicant respectfully requests withdrawal of the rejection of claims 1 and 25.

Regarding the rejection of claim 4, the Examiner alleges claim 4 is vague, indefinite, and confusing in the use of abbreviations for the substrates and that the full chemical name should be provided. Applicant has amended claim 4 to recite the full chemical names. Therefore, Applicant respectfully submits claim 4 is not vague, indefinite, and confusing. Thus, Applicant respectfully requests withdrawal of the rejection of claim 4.

Regarding the rejection of claim 6, the Examiner alleges claim 6 is vague and indefinite in the recitation of “aerobic anaerobic bacteria”. Applicant respectfully submits that one skilled in the art upon reading claim 6 would understand that aerobic anaerobic bacteria is a clear term in the art of microbiology since it refers to bacteria which can grow both in aerobic conditions and in anaerobic conditions while other bacteria can grow only in aerobic or anaerobic conditions. Therefore, Applicant respectfully submits claim 6 is not vague and indefinite. Thus, Applicant respectfully requests withdrawal of the rejection of claim 6.

Regarding the rejection of claim 8, the Examiner alleges claim 8 is vague and indefinite in the use of parentheses, since the Examiner believes it is unclear whether the parenthetical material is or is not intended to be part of the claim. Applicant has reviewed claim 8 and respectfully submits claim 8 does not contain any parentheticals. Therefore, Applicant respectfully submits claim 8 is

not vague and indefinite. Thus, Applicant respectfully requests withdrawal of the rejection of claim 8. Applicant notes that parentheticals have been deleted from claims 25 and 26.

The Examiner rejects claims 4-6, 7, 9, and 25 alleging each recite a broad recitation and also recites “preferably” or “in particular” which is the narrower statement of a range/limitation making these claims indefinite by raising a question or doubt as to whether the feature introduced by such language is merely exemplary of the remainder of the claim, and therefore not required, or a required feature of the claims. Applicant has amended claims 4, 5, 7, 9, and 25 to delete any reference to “preferably” or “in particular”. Therefore, Applicant respectfully submits claims 4, 5, 7, 9, and 25 are not indefinite. Thus, Applicant respectfully requests withdrawal of the rejection of claims 4, 5, 7, 9, and 25. In addition, Applicant notes that similar language has been deleted from claim 2.

Applicant notes claim 6 does not include the phrase “preferably”, “in particular” or other similar phrase and respectfully submits that claim 6 is not vague or indefinite. Thus, Applicant respectfully requests withdrawal of the rejection of claim 6.

The Examiner rejects claim 25 as being vague, indefinite, and confusing in the recitation “which may contain bacteria, cultured under anaerobic conditions”. Applicant has amended claim 25 to recite a medium containing bacteria wherein the bacteria is cultured under anaerobic conditions. Thus, Applicant respectfully submits claim 25 is not vague, indefinite, and confusing. Therefore, Applicant respectfully requests withdrawal of the rejection of claim 25.

The Examiner rejects claim 26 as being vague and indefinite and containing a cultured step in a composition claim. Applicant has amended claim 6 to be in composition claim form. Therefore, Applicant respectfully submits claim 26 is not vague and indefinite. Thus, Applicant respectfully requests withdrawal of the rejection of claim 26.

Claims Rejected under 35 U.S.C. § 102(b)

The Examiner rejects claims 1-7 and 25-26 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,725,203 issued to Sellers (“Sellers”). Applicant respectfully traverses the rejection.

To anticipate a claim, the relied upon reference must disclose every limitation of the claim. Among other elements, claim 1 defines a bacterial culture medium for use under anaerobic conditions comprising at least one metal complex which allows the oxidative polymerization of an indoxyl chemical derivative and a substrate containing an indoxyl chemical derivative to result in an

insoluble colored compound. Applicant respectfully submits Sellers fails to teach each of the elements of claim 1.

In making the rejection, the Examiner characterizes Sellers as teaching “a culture medium for the identification of proteus and probidencia interic bacterial strains using a combination of L-tryptophane (a compound including an indol ring) with ammonium ferric citrate and “brom cresol purple” (Abstract).” See Paper No. 20031114, page 3. Applicant respectfully submits Sellers teaches a “culture media to affect the growth and enable the identification of bacteria.” Sellers, col. 1, lines 4-6. The culture medium in Sellers includes “the combination of L-tryptophane, ferric ammonium citrate and brom cresol purple maintained in an acid medium, having a pH of about 6.7.” Sellers, col. 2, lines 24-27. Applicant respectfully submits that the Examiner is confusing “indol” with “indoxyl”. An indoxyl is an indol ring with an “OH” function at position one of the ring. By indoxyl chemical derivatives, it is meant chemical structures representing substitution at the H of the OH of the ring.

Sellers teaches the use of tryptophane, which contains an indol and not an indoxyl as a component to generate color. In Sellers, the added ferric complexes with an oxidized indol is what produces the colored complex. By contrast, in the bacterial culture medium defined in claim 1, ferric gets reduced to ferrous by indoxyl, which becomes oxidized and thus precipitates as a colored complex. Therefore, Sellers fails to teach each of the elements of claim 1, since Sellers fails to teach at least bacteria culture medium comprising a substrate containing an indoxyl chemical derivative.

The failure of Sellers to teach each of the elements of claim 1 is fatal to the anticipation rejection. Therefore, Applicant respectfully submits claim 1 is not anticipated by Sellers. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 1.

Claims 2-7 and 25-26 each depend from claim 1 and contain all the elements thereof. Therefore, Applicant respectfully submits these claims are not anticipated by Sellers at least for the same reasons as claim 1. Therefore, Applicant respectfully submits claims 2-7 and 25-26 are not anticipated by Sellers. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 2-7 and 25-26.

Claims Rejected under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-9 and 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Sellers in view of Journal of Microbiological Methods, Vol. 13, No. 1, April 1, 1991, pages 75-83 authored by Chevalier et al. (“Chevalier”) and in view of Difco Manual, 11th Edition, 1998, pages 125-127 and 246-247 (“Difco”). Applicant respectfully traverses the rejection.

In making the rejection, the Examiner characterizes Sellers as discussed above. Applicant has addressed the Examiner's anticipation rejection of claims 1-7 and 25-26 above. Therefore, Applicant respectfully submits the discussion above regarding Sellers failing to teach each of the elements of claims 1-7 and 25-26 as equally applicable to an obviousness rejection based on Sellers. In addition, claims 8, 9 and 27 depend from claim 1 and contain each of the elements thereof. Therefore, Applicant respectfully submits each of the elements of claims 8, 9 and 27 are not taught or suggested by Sellers at least for the reasons as claim 1 discussed above. Therefore, Applicant respectfully submits Sellers fails to teach or suggest each of the elements of claims 1-9 and 25-27. The Examiner relies on Chevalier and Difco to cure the defects of Sellers, however, Applicant respectfully submits Chavalier and Difco fail to cure the defects of Sellers.

The Examiner characterizes Chevalier as teaching an lactobacilli MRS medium which contains magnesium sulfate in combination with chromogenic substrates for the detection of α -galactosidase and the use of antibiotics in selective media. The Examiner does not cite Chevalier for teaching a bacterial culture medium comprising at least one metal complex which allows the oxidative polymerization of an indoxyl chemical derivative in a substrate containing an indoxyl chemical derivative resulting in an insoluble color compound as defined in claim 1. Moreover, in reviewing Chevalier in its entirety, Applicant cannot find any sections in Chevalier that teach or suggest such elements. Therefore, Applicant respectfully submits Chevalier fails to cure the defects of Sellers. The Examiner relies on Difco to cure the defects of Sellers and Chevalier, however, Applicant respectfully submits Difco fails to cure the defects of Sellers and Chavalier.

In making the rejection, the Examiner characterizes Difco in a similar manner as Chavalier. In addition, the Examiner cites Difco as showing the use of cysteinated Columbia medium as being old and well-known in the art. The Examiner does not cite Difco as teaching or suggesting a bacterial culture medium comprising at least one metal complex which allows the oxidative polymerization of an indoxyl chemical derivative and a substrate containing an indoxyl chemical derivative resulting in an insoluble colored compound as defined claim 1. Moreover, Applicant in reviewing Difco in its entirety, cannot find any sections that teach or suggest such elements. Therefore, Applicant respectfully submits Difco fails to cure the defects of Sellers and Chavalier.

In addition, Applicant respectfully submits that in Chavalier and in Difco, magnesium cannot be substituted for ferric as defined in claim 1. Therefore, at least for the reasons discussed above, the combination of Sellers, Chavalier and Difco fail to teach or suggest each of the elements of claim 1.

The failure of the combination of Sellers, Chavalier and Difco to teach or suggest each of the elements of claim 1 is fatal to the obviousness rejection. Therefore, Applicant respectfully

submits claim 1 is not obvious over Sellers in view of Chavalier and Difco. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 1.

Claims 2-9 and 25-27 each depend from claim 1 and contain all the elements thereof. Therefore, Applicant respectfully submits claims 2-9 and 25-27 are not obvious over Sellers in view of Chavalier and Difco at least for the same reasons as claim 1. Therefore, Applicant respectfully requests withdrawal of the rejections of claims 2-9 and 25-27.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Patent Office believes that a telephone conference would be useful in moving the application forward to allowance, the Patent Office is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN

Dated: 6/8/04

By: [Signature]
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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, with sufficient postage, in an envelope addressed to: Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

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6/8/04
Date